

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the)
Subscriber Changes Provisions)
of the Telecommunications Act)
of 1996)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
)
TALK AMERICA INC.)
)
Request for Waiver)

CC Docket No. 94-129**RECEIVED****MAY 31 2001**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR EXPEDITED WAIVER

Talk America Inc. ("Talk America" or "Petitioner"),¹ by its attorneys and pursuant to Section 1.3 of the Commission's Rules, respectfully petitions the Commission to grant a limited waiver of 47 C.F.R Sections 64.1100 – 64.1190 as required to transfer all remaining presubscribed customers of OmniCall, Inc. ("OmniCall") nationwide to Talk America without first obtaining each subscriber's individual authorization and verification.² Talk America's corporate parent, Talk America Holdings, Inc. ("Talk"), currently is in the process of

¹ Talk America Inc., f/k/a Talk.com Holding Corp., is a direct, wholly owned subsidiary of Talk America Holdings, Inc., f/k/a Talk.com Inc. Talk America Holdings, Inc. currently has two other utility subsidiaries, in addition to Petitioner, that hold various state telecommunications authorizations: The Other Phone Company, Inc. d/b/a Access One and OmniCall, Inc. (both indirect wholly owned subsidiaries). The customers of OmniCall, Inc. are the subject of the instant Petition.

² Pursuant to 47 C.F.R. §64.1150, prior to submitting a preferred carrier change, carriers must either: (1) obtain the subscriber's written and signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided for the exclusive purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

reorganizing its subsidiaries after consummation of its merger with Access One Communications Corp. ("Access One"). Specifically, Talk intends to surrender all the state telecommunications authorizations held by OmniCall and to migrate any remaining OmniCall customers to Talk America.³ In order to migrate these customers, Petitioner seeks approval of the instant Petition and requests expedited treatment of this Petition, to the extent necessary, to allow Talk to effectuate the proposed transfer on or before *June 30, 2001*.⁴

As a result of a merger between Talk and Access One, consummated in August 2000, Talk conducts business through multiple utility subsidiaries, each operating pursuant to separate operating authorizations. Talk is in the process of simplifying and streamlining its corporate structure and making the necessary regulatory filings. Talk intends to make the Talk America brand a central element of its local, intraLATA and interLATA services offered to the public. To further these business plans, Talk would like to consolidate its operations by eliminating OmniCall's state authorizations and transferring any remaining customers from OmniCall to Talk America. By this Petition, Petitioner requests that the FCC facilitate the reassignment of customers from OmniCall to Talk America.

Talk America is a wholly owned, direct subsidiary of Talk America Holdings, Inc., a publicly held Delaware corporation with principal offices at 12020 Sunrise Valley Drive, Suite 250, Reston, Virginia 20190. Talk America is authorized to provide a suite of intrastate

³ Talk has already received approval from the FCC to transfer OmniCall's remaining customers in Georgia to Talk America, in connection with a Georgia PSC directive, in an FCC Order released March 30, 2001 (DA 01-803). Talk now intends to complete the transfer for all remaining OmniCall customers.

⁴ Petitioner is aware that, by the FCC's Order in this docket released on May 15, 2001, the FCC has amended its carrier change rules. Because the amended rules will not take effect until June 21, 2001 at the earliest, assuming OMB approval by that date, Petitioner files this Petition pursuant to the rules still in effect due to its urgent need to effectuate the transfer as soon as possible. Nevertheless, Petitioner has included the disclosures required by the amended rules in its customer notification letter appended hereto.

local and/or long distance telecommunications services to business and residential customers virtually nationwide via resale or the use of UNE-Platform arrangements where available. Talk America also is authorized by the FCC to provide interstate and international telecommunications services.

The other indirect subsidiaries of Talk, The Other Phone Company d/b/a Access One and OmniCall, provide a combination of facilities-based and resold local and long distance telecommunications services to small and medium-sized business customers. OmniCall is a South Carolina corporation headquartered in Greenville, South Carolina. Prior to the merger, OmniCall was authorized to provide local telecommunications services in 16 states and long distance service in 32 states, with a focus in the BellSouth region. Currently, OmniCall has presubscribed customers only in the following states: Alabama, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. OmniCall also is authorized by the FCC to provide interstate and international telecommunications services.

Petitioner now seeks a limited waiver of the Commission's rules to permit Talk America to be designated the carrier of record for all existing OmniCall presubscribed customers, and as such, to assume the billing, customer care, and other functions associated with providing interexchange services and, where applicable, local exchange services to these customers. Customers will not experience any change in rates, calling plans or service quality as a result of the transfer to Talk America. The transition from OmniCall to Talk America will be transparent to the customers.

Importantly, affected customers will be fully informed of the change. Talk America will make reasonable attempts to contact each affected customer individually by mail to explain the process, and inform the customer of its rights and options, including the customer's

right to select a carrier other than Talk America. Specifically, Talk America will send a notification letter to each OmniCall customer substantially in the form of *Attachment A* appended hereto. The letter will inform customers of the automatic switch in their service provider to Talk America 30 days after the date of the letter, if they don't select another carrier within that timeframe; that Talk America will be responsible for any carrier change charges associated with the transfer; that there will be no change to the customer service available to them; and that they will continue to receive all features, services and current low rates that they enjoy with OmniCall. The notification letter will also invite customers to dial Talk America's toll-free number for more information and inform customers that Talk America will investigate and resolve any outstanding customer complaints regarding services provided by OmniCall.

Petitioner respectfully submits that the purposes of the Commission's LOA and verification rules would not be served by obtaining prior authorization and verification in order to switch the affected customers of OmniCall to Talk America, and that the public interest is served by granting a waiver of those rules in these limited circumstances. Further, Petitioner fears that such a "re-presubscription" effort would prove confusing and frustrating to customers. Customers who do not understand the need to sign new forms, and fail to respond, could lose service altogether or pay potentially higher casual calling rates. Accordingly, Petitioner believes that any potential benefits of obtaining new authorizations are outweighed by the potential detriments of such a program, and submit that all efforts will be taken to ensure that customers are not inconvenienced or harmed in any way. Indeed, Petitioner's goal is to be able to provide superior service and rates to affected customers as a result of the migration.

It is well-established that waiver of the Commission's Rules is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve

the public interest.⁵ The party requesting waiver must show that the underlying purpose of the rule would not be served or would be frustrated, or that unusual or unique circumstances cause application of the rule to be unfair, unduly burdensome or contrary to the public interest.

In the instant case, the special circumstances requiring a deviation from the Commission's Rules include the need to ensure a seamless transition of long distance and, in some cases, local telecommunications service providers for the affected customers. If the Commission grants the waiver, it will protect against the possibility of customers losing long distance and, in some cases, local service altogether or being charged potentially higher casual calling rates. Moreover, the affected customers will be notified promptly of the process and their rights and options. By transferring customers by notification as described in this request, the policy goals of the Commission's authorization and verification requirements will be met more efficiently and consistent with the public interest. Indeed, the circumstances that justify grant of a waiver to Petitioners are analogous to those that the Commission has recently found to justify a waiver for many other carriers.⁶

Accordingly, Petitioner respectfully requests that the Commission waive its authorization and verification rules as set forth above. Expedited action on this waiver is requested to the extent necessary to allow Talk America to effectuate the customer migration on

⁵ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ See, e.g., *Talk.com Inc., Talk.com Holding Corp., Access One Communications Corp., The Other Phone Company, Inc. d/b/a Access One, and OmniCall, Inc.*, DA 01-803 (rel. Mar. 30, 2001); *Talk.com, Inc. Talk.com Holding Corp. Petition for Waiver*, DA 00-1427 (rel. June 27, 2000); *Sprint Communications Company, Request for Waiver*, DA 00-620 (rel. Mar. 17, 2000); *Iowa Telecommunications Services, Request for Waiver*, 14 FCC Rcd 21319 (1999); *Conversent Communications, LLC, Request for Waiver*, 14 FCC Rcd 21316 (1999); *Excel Telecommunications, Inc., et al., Request for Waiver*, 14 FCC Rcd 16123 (1999).

or before *June 30, 2001*. A limited waiver of the Commission's LOA and verification rules will allow a seamless transfer that will be transparent and advantageous to customers.

Respectfully submitted,

TALK AMERICA INC.

A handwritten signature in black ink, appearing to read "Melissa Conway", is written over a horizontal line.

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Their Counsel

Dated: May 31, 2001

ATTACHMENT A

June __, 2001

Dear OmniCall Customer:

We are continually striving to provide the best service possible for our customers. Last year, as part of a merger, OmniCall became a subsidiary of Talk America Holdings Inc. (formerly known as Talk.com). As part of our effort to serve you better, we are pleased to announce that Talk America will soon provide and bill all of the great telecommunications services you receive today. As a Talk America customer, you will continue to receive all the features, services and current low rates that you enjoy today as an OmniCall customer, but with the backing and experience of a provider serving nearly 2 million subscribers. Call us at 800-291-9699 or visit us at www.talk.com to see all of the services available to you.

You may choose another carrier for your local and long distance services at any point. If you do not choose another carrier within thirty (30) days of the date of this letter, you will automatically become a Talk America customer. If your local carrier charges you in connection with your becoming a Talk America customer, we will be responsible for paying any such charge. We hope you'll stay, and start experiencing the high quality service Talk America will provide.

We at Talk America will work to resolve any outstanding complaints you may have against OmniCall. We look forward to meeting your telephone communications needs and are happy to answer any questions you may have regarding this notice or any of our services. If you have any questions, please contact us at 800-291-9699.

Cordially,

Sharon Thomas
Director of Regulatory Affairs

Talk America

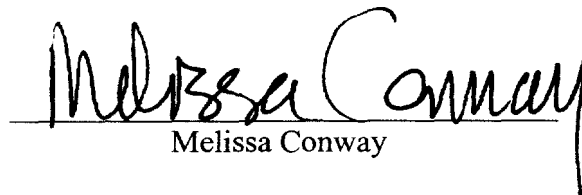
CERTIFICATE OF SERVICE

I, Melissa Conway, hereby certify that on this 31st day of May, 2001, a copy of the foregoing **PETITION FOR EXPEDITED WAIVER** was delivered by hand to the following:

Michele Walters
Federal Communications Commission
Common Carrier Bureau
Accounting Policy Division
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Washington, D.C. 20554

Dana Bradford
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Accounting Policy Division
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International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036


Melissa Conway